

JAN 05 2006Adidas America v. Payless, No. 04-35553

KLEINFELD, Circuit Judge, dissenting in part and concurring in part:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent from Part I of the majority's disposition. The majority reads Wood v. GCC Bend, LLC¹ too narrowly. There is a significant factual overlap between the issues on appeal in this case and those still pending in the district court and the issue may well give rise to additional appeals based on the further proceedings of the district court. Wood should be the end of this appeal.² We should reverse certification and dismiss the appeal.

As to Part II of the disposition pertaining to the merits of the case, I would agree fully with the majority's disposition, if I thought it appropriate to reach the merits.

¹ Wood v. GCC Bend, LLC, 422 F.3d 873 (9th Cir. 2005).

² Id. at 880.